

Changes to OPM Guidance for Shutdown Furloughs October 8, 2013

Guidance on Various Topics

The changes below are included in the October 8, 2013, update to OPM's [Guidance for Shutdown Furloughs](#).

Holidays

In Section G (Holidays), we are revising the entire section as follows:

1. Will an employee “exempt” from furlough be paid for a holiday that occurs during a shutdown?

A. Employees are “exempt” from furlough if they are not affected by a lapse in appropriations. As such, an “exempt” employee will be paid for a holiday according to the normal rules governing holidays.

2. Will furloughed employees be paid for a holiday that occurs during a shutdown furlough?

A. Furloughed employees will not receive pay for a holiday that occurs during a shutdown furlough unless authorized by subsequent legislation.

3. What is the status of an “excepted” employee who does not perform work on a holiday that occurs during a shutdown furlough?

A. An “excepted” employee who does not perform work on a holiday must be placed in a furlough status for the holiday and must be provided written notice of the agency’s decision to furlough in accordance with the guidance in section P. Procedures. This is because during a lapse of appropriations all affected employees must be (1) at work performing excepted activities or (2) furloughed. This applies with respect to any period of time that is part of an affected employee’s regularly scheduled administrative workweek, including a holiday.

4. Will an “excepted” employee who does not work on a holiday that occurs during a shutdown furlough be paid for the holiday?

A. No. An “excepted” employee who does not work on a holiday will be placed in a furlough status for the holiday and will not receive pay for a holiday that occurs during a shutdown furlough unless authorized by subsequent legislation.

5. Can an “excepted” employee voluntarily report to work on the holiday?

A. No. Each agency must determine which excepted activities must be performed on a holiday, and which employees are needed to perform those functions. Employees who are not otherwise needed to perform excepted functions on the holiday must be placed in furlough status for that day.

6. Can “excepted” employees be required to perform work on a holiday that occurs during a shutdown furlough?

A. Yes. Each agency is responsible for determining which excepted activities must be performed on a holiday in order to carry out functions related to such excepted activities. Failure to report to duty on a holiday is no different than failure to report to work on any other day (see Question F.2).

7. What pay entitlements will accrue to an “excepted” employee who performs work on a holiday during a shutdown furlough?

A. The Federal Government will be obligated to pay an excepted employee who performs work on a holiday according to the normal rules governing pay for work on a holiday. For example, under 5 U.S.C. 5546(b), a covered employee would receive his or her rate of basic pay, plus holiday premium pay at a rate equal to the employee’s rate of basic pay. In addition, if such an employee performs officially ordered or approved overtime work on a holiday (i.e., work in excess of his or her basic non-overtime work requirement for that day), the employee would receive overtime pay (or compensatory time off) for that work. Of course, an excepted employee cannot receive payment for working on a holiday until an appropriations act or a continuing resolution is enacted.

8. How do the “in lieu of” holiday rules apply during a shutdown furlough?

A. When a shutdown furlough is not in effect, all full-time employees, including those on flexible or compressed work schedules, are entitled to an “in lieu of” holiday when a holiday falls on a nonworkday. OPM guidance on “in lieu of” holidays can be found here <http://www.opm.gov/policy-data-oversight/pay-leave/pay-administration/fact-sheets/holidays-work-schedules-and-pay/>.

During a shutdown furlough, generally—

- The normal “in lieu of” holiday rules apply to employees “exempt” from furlough.
- The “in lieu of” holiday rules do not apply to furloughed employees (i.e., employees do not receive an “in lieu of” holiday if they are in a furlough status on a holiday).
- When scheduling holidays for “excepted” employees, the normal “in lieu of” holiday rules apply. However, as explained in Questions G.4., G.5., and G.6., otherwise excepted employees must be furloughed on the “in lieu of” holidays unless they are working.

Employee Assistance

In Section I (Employee Assistance), we are revising Question I.1. by adding a link to the U.S. Department of Labor list of Federal Identification Codes as follows:

1. Are employees entitled to unemployment compensation while on furlough?

- A. It is possible that furloughed employees may become eligible for unemployment compensation. State unemployment compensation requirements differ. Some States require a 1-week waiting period before an individual qualifies for payments. In general, the law of the State in which an employee's last official duty station in Federal civilian service was located will be the State law that determines eligibility for unemployment insurance benefits. (See the Department of Labor website "Unemployment Compensation for Federal Employees" at <http://workforcesecurity.doleta.gov/unemploy/unemcomp.asp>.) Agencies or employees should submit questions to the appropriate State (or District of Columbia) office. The Department of Labor's website provides links to individual State offices at <http://www.servicelocator.org/OWSLinks.asp>. A list of Federal Identification Codes (FIC) needed for unemployment compensation applications can be found here http://www.dol.gov/dol/shutdown/FIC_chart.pdf.

Labor Management Relations Implications

In Section Q (Labor Management Relations Implications), we are revising Question Q.4. to replace "i.e." in the second parenthetical with "e.g." as follows:

4. Can union officials perform representational work on "official time" during a shutdown?

- A. Exempted employees (i.e. paid by non-appropriated funds) serving as union officials may continue to be granted official time to the same extent and in the same manner as they would under non-shutdown conditions. Other employees serving as union officials may work on official time during a shutdown if such activities fall within the Anti-Deficiency Act's exceptions. The exercise of a union's statutory and/or contractual rights triggered by an excepted management action taken during a shutdown would constitute an excepted activity. Therefore, if an agency has determined that a management action taken during a shutdown is permissible because it is an excepted activity, and such action triggers union representational rights under the collective bargaining agreement or 5 USC chapter 71 (e.g., a formal discussion, a Weingarten interview, or the representation of an employee in connection with an adverse personnel action), official time should be granted to employees to perform representational duties related to that action. With this in mind, agency officials should consult with their General Counsel to evaluate whether contemplated management actions will trigger statutorily or contractually guaranteed representation rights.